

AMENDED IN ASSEMBLY AUGUST 7, 2006

AMENDED IN ASSEMBLY JUNE 22, 2006

AMENDED IN SENATE MAY 26, 2006

AMENDED IN SENATE MARCH 27, 2006

SENATE BILL

No. 1428

Introduced by Senator Scott

February 22, 2006

An act to add *and repeal* Section 679 to the Unemployment Insurance Code, relating to unemployment insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1428, as amended, Scott. Unemployment compensation: employer: motion picture industry.

Existing law requires that the determination of the employer-employee relationship be made pursuant to common-law principles, with specified exceptions. Existing law provides that when an individual or entity contracts to supply an employee to perform services for a customer or client, and is a leasing employer or a temporary services employer, as defined, the individual or entity is the employer of the employee who performs the services, provided that certain requirements are satisfied.

This bill would provide that, notwithstanding those provisions *and until January 1, 2011*, any employing unit that is a motion picture payroll services company, as defined, shall be treated as an employer of a motion picture production worker, as defined. This bill would require any ~~person who is~~ *employing unit* operating as a motion picture payroll services company to report that status to the Employment Development Department ~~within 15 days after first~~

~~paying wages to a motion picture production worker, or by January 15, 2007, subject to losing its status as an employer of that motion picture production worker, or its intent to discontinue that status, within specified periods of time, as provided. This bill would also provide that the employing unit's status would be applied to its affiliated entities, as defined, and would require specified actions by those affiliated entities and the motion picture payroll services company when acquired or created by the motion picture payroll services company.~~

This bill makes statements with regard to its impact on employing units who do not elect to be considered motion picture payroll services companies.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 679 is added to the Unemployment
2 Insurance Code, to read:

3 679. (a) Notwithstanding Sections 606.5 and 621, for the
4 purposes of this code, "employer" means any employing unit that
5 is a motion picture payroll services company who pays the wages
6 of a motion picture production worker for services to a motion
7 picture production company or an allied motion picture services
8 company *and that has filed a timely statement of its intent to be*
9 *the employer of motion picture production workers pursuant to*
10 *subdivision (b).*

11 (b) (1) ~~Any person who is~~ *employing unit* operating as a
12 motion picture payroll services company, *as defined by this*
13 *section, that intends to be treated as an employer of motion*
14 *picture production workers pursuant to subdivision (a)* shall file
15 a statement with the department that declares its intent to be the
16 employer of motion picture production workers, pursuant to this
17 section, within 15 days after first paying wages to the workers.
18 The director shall prescribe the form and manner of the
19 statement.

20 (2) ~~Any person who~~ *employing unit that* operated as a motion
21 picture payroll services company prior to January 1, 2007, *that*
22 *intends to be treated as an employer of motion picture*

1 *production workers pursuant to this section shall file the*
2 *statement required by this section by January 15, 2007.*

3 (3) The director may prevent a motion picture payroll services
4 company that fails to file a timely statement, as required by this
5 section, from being treated as an employer of motion picture
6 production workers.

7 (4) *Any motion picture payroll services company that filed a*
8 *statement of its intent to be an employer of motion picture*
9 *production workers pursuant to this section shall notify the*
10 *department of its intent to discontinue its status as an employer*
11 *under this section by filing a statement of that intent with the*
12 *department no later than December 15th of the year preceding*
13 *the year for which the revocation is to take effect.*

14 (5) *Any statement filed by a motion picture payroll services*
15 *company pursuant to this subdivision shall be applied to all*
16 *affiliated entities of the motion picture payroll services company*
17 *in existence at the time the statement is filed.*

18 (c) For each rating period beginning on or after January 1,
19 2007, in which an employer operating as a motion picture payroll
20 services company obtains or attempts to obtain a more favorable
21 rate of contributions by ~~not~~ reporting under this section *in a*
22 *manner that is* due to deliberate ignorance, reckless disregard,
23 fraud, intent to evade, misrepresentation, or willful
24 nondisclosure, the director shall assign the maximum
25 contribution rate plus 2 percent for each applicable rating period,
26 the current rating period, and the subsequent rating period.
27 Contributions paid in excess of the maximum rate under this
28 section shall not be credited to the employing unit's reserve
29 account.

30 (d) (1) *On and after January 1, 2007, whenever a motion*
31 *picture payroll services company creates or acquires a motion*
32 *picture payroll services company, or acquires substantially all of*
33 *the assets of a motion picture payroll services company, the*
34 *created or acquired motion picture payroll services company*
35 *shall do the following:*

36 (A) *Determine its reserve account, in accordance with Section*
37 *1052, as if an application for transfer of the reserve account of*
38 *the motion picture payroll services company that created or*
39 *acquire it had been made under Section 1051.*

1 (B) Determine its rate of contribution in accordance with
2 Section 1052.

3 (2) Notwithstanding Sections 135.1 and 135.2, the created or
4 acquired motion picture company described in paragraph (1)
5 shall constitute a separate employing unit.

6 (3) Prior to the creation or acquisition of a motion picture
7 payroll services company that will be an affiliated entity, a
8 motion picture payroll services company shall seek the approval
9 of the department to apply the provisions of this section to the
10 created or acquired entity. The department may promulgate
11 regulations necessary to implement the provisions of this
12 paragraph.

13 ~~(d)~~

14 (e) For purposes of this section, the following definitions
15 apply:

16 (1) “Affiliated entity” means any one or more motion picture
17 payroll services company or companies owned or controlled,
18 directly or indirectly, by the same interest. For purposes of this
19 paragraph, “owned or controlled” means ownership or control
20 that exceeds 50 percent of the voting stock or profits interest of
21 the motion picture payroll services company.

22 ~~(f)~~

23 (2) “Allied motion picture services company” means any
24 person engaged in an industry closely allied with, and whose
25 work is integral to, a motion picture production company in the
26 development, production, or postproduction of a motion picture,
27 excluding the distribution of the completed motion picture and
28 any activities occurring thereafter, and who hires from the same
29 pool of craft and guild or union workers, actors, or extras as a
30 motion picture production company.

31 ~~(g)~~

32 (3) “Motion picture” means a motion picture of any type,
33 including a theatrical motion picture, a television production, a
34 television commercial, a music video, or any other type of
35 motion picture regardless of its theme or the technology used in
36 its production or distribution

37 ~~(h)~~

38 (4) (A) “Motion picture payroll services company” means any
39 employing unit that directly or through its affiliates meets all of
40 the following criteria:

1 (i) Contractually provides the services of motion picture
2 production workers to a motion picture production company or to
3 an allied motion picture ~~production~~ services company.

4 (ii) Is a signatory to a collective bargaining agreement for one
5 or more *of its* clients.

6 (iii) Controls the payment of wages to the motion picture
7 production workers and pays those wages from its own account
8 or accounts.

9 (iv) Is contractually obligated to pay wages to the motion
10 picture production workers without regard to payment or
11 reimbursement by the motion picture production company or
12 allied motion picture services company.

13 (v) At least 80 percent of the wages paid by the motion picture
14 payroll services company each calendar year are paid to workers
15 associated ~~with~~ *between* contracts with motion picture production
16 companies *and motion picture payroll services companies*.

17 (B) If the director ~~finds~~ *determines* that any employing unit is
18 operating as a motion picture payroll services company but is
19 failing to comply with any of the provisions of subparagraph (A)
20 of paragraph ~~(3)~~ (4), the director may preclude the employing
21 unit from being classified as a motion picture payroll services
22 company *pursuant to this section*. Upon the director's
23 determination, the employing unit is subject to determination of
24 the employer-employee relationship ~~pursuant to Section 606.5.~~
25 *pursuant to this code and common law principles*.

26 ~~(4)~~

27 (5) "Motion picture production company" means any
28 employing unit engaged in the development, production, and
29 postproduction of a motion picture, excluding the distribution of
30 the completed motion picture and any activities occurring
31 thereafter.

32 ~~(5)~~

33 (6) "Motion picture production worker" means an individual
34 who provides services to a motion picture production company or
35 allied motion picture services company and who, with regard to
36 those services, is reported under this part as an employee by the
37 motion picture payroll services company. An individual who has
38 been reported as an employee by the motion picture payroll
39 services company, without regard to the individual's status as an
40 employee or independent contractor, shall be the employee of the

1 motion picture payroll services company for the purposes of this
2 code throughout the contractual period with the motion picture
3 payroll services company.

4 ~~(6) “Wages” includes residual payments.~~

5 (7) “Wages” shall have the same meaning given the term in
6 Article 2 (commencing with Section 926) of Chapter 4 of Part 1
7 of Division 1, and shall include residual payments.

8 (f) An employing unit shall have the right of notice and appeal
9 pursuant to this provisions of this part.

10 (g) This section shall remain in effect only until January 1,
11 2011, and as of that date is repealed, unless later enacted statute,
12 which is chaptered before January 1, 2011, deletes or extends
13 that date.

14 SEC. 2. Nothing in this act shall be construed to change
15 existing law as it relates to employing units who do not elect to
16 be considered a motion picture payroll services company
17 pursuant to Section 679 of the Unemployment Insurance Code.